



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

CITY OF NASHUA, NEW HAMPSHIRE

Petitioner

v.

MICHAEL G. MURRAY AND LOCAL 1044,

AFT, NHFT, AFL-CIO, NASHUA

TEACHERS UNION

Respondents

CASE NO. T-0244:5

DECISION NO. 87-57

APPEARANCES

Representing the City of Nashua:

Steven A. Bolton, Esq., Counsel
Jane A. Bangert, Director of Personnel
Berard Masse, Superintendent
Ernest A. Mercier, Nashua School District

Representing Michael Murray and Local 1044:

Emmanuel Krasner, Esq., Counsel
Claudette Jean, Nashua Teachers' Union
Edward H. Phaneuf, President Nashua Teachers' Union

BACKGROUND

The City of Nashua through its Counsel filed a charge against Michael G. Murray and Local 1044, AFT and requested that PELRB order the Local to cease and desist from seeking arbitration of the placement of Defendant Michael Murray on probation for one year.

Counsel for Michael Murray and Local 1044 replied that the School District in placing Michael Murray on probation was taking disciplinary action and under the collective bargaining, the School District is prohibited from disciplining the employees without just cause and that in the instant case, the Local and Michael Murray believe and aver that his placement on probation was done without just cause in that he had served the Nashua School District for 16 years prior to this time and always received favorable evaluations. Further, that in the year in question, his student load was doubled as a result of reduction in force and although his evaluations were mixed in that some were favorable and some expressed cause for concern, none of the evaluations or observation reports taken that year justified the actions of the School board in disciplining him by putting him on probation for a year.

Hearing on this complaint was held at the PELRB Office on June 25, 1987 and continued on September 11, 1987.

Several motions were filed prior to the hearing by Counsel for the City requesting recusal of Board Members James C. Anderson, Daniel Toomey and Chairman Robert E. Craig. Motion for recusal of members Anderson and Toomey was based on their involvement in union affairs in the City of Nashua; motion for recusal of Chairman Craig based on alleged statements made and involvement in discussions during a recent PELRB symposium concerning the pending matter. Members Anderson and Toomey did not participate in the hearing and motion to recuse Chairman Craig was declared invalid and denied.

FINDINGS OF FACT

1. Issue before PELRB was whether the language in the Management Rights Clause, Section 14.2 of the collective bargaining agreement which states:

"...to hire, promote, transfer, assign and retain employees in positions with the Nashua School System and to suspend, demote, discharge or take other disciplinary action against employees for just cause to relieve employees for just cause, to relieve employees from duty because of lack of work or other legitimate reasons;..."

was intended by the parties to encompass the situation of a teacher being placed on probation.

2. Many teachers in the past ten years were renewed but placed on probation but did not grieve their status; and, Michael Murray was the first teacher to attempt to pursue the matter through the "Grievance Procedure", Article III, of the collective bargaining agreement.

3. In February of 1983, Mr. Murray was evaluated by his principal, Mr. Mercier; result was that he was recommended and renominated for the '83-'84 school year with the proviso that he have a plan for improvement and that he would be evaluated twice during the year.

4. The recommendation was concurred to by the Superintendent and acted upon by the Board of Education. Mr. Murray was renominated but placed on probation.

5. The grievance mechanism was invoke and the grievance denied as non-grievable and within managerial prerogative.

6. The Local attempted to take the matter to arbitration; the City went to Superior Court to restrain arbitration from taking place; an injunction was granted in Superior Court, however the Supreme Court dismissed the case in Superior Court and advised PELRB that it held jurisdiction in such matters.

7. PELRB finds that the action taken by the School District in placing Mr. Murray on probation was disciplinary and grievable under the contract. PELRB also finds that it was clear from the evidence presented that the same results could have been achieved without the placing of Mr. Murray on probation.

8. Requests for finds of fact and rulings of law filed by Counsel for the

City of Nashua are as follows:

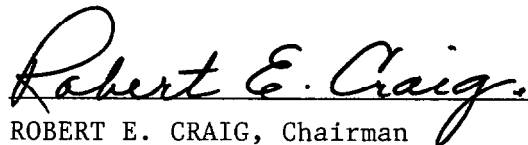
Requests 1, 2, 3 and 4, GRANTED.
Request 5, DENIED.
Requests 6, 7, 8, 9, 10 and 11, GRANTED.
Request 12, DENIED.
Request 13, GRANTED.
Request 14, DENIED.
Request 15, GRANTED.
Requests 16, 17 and 18, DENIED.

DECISION AND ORDER

After careful review of all testimony and evidence presented at the hearings, PELRB rules as follows:

Action taken against Michael Murray was disciplinary and subject of the Grievance Procedure under the contract.

Complaint filed by the City of Nashua is hereby dismissed.

A handwritten signature in cursive script, reading "Robert E. Craig", is written over a horizontal line.

ROBERT E. CRAIG, Chairman
PUBLIC EMPLOYEE LABOR RELATIONS
BOARD

Signed this 11th day of September, 1987.

By unanimous vote. Chairman Robert E. Craig presiding. Members Richard E. Molan, Esq. and Seymour Osman present and voting. Also present, Executive Director, Evelyn C. LeBrun